IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11631 of 2004

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURESHBHAI CHUNILAL PATEL - Petitioner(s)
Versus
UNION OF INDIA & 3 - Respondent(s)

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Appearance :

MR Mayank Desai for PK HANDA for Petitioner(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1, 4,
RULE SERVED for Respondent(s) : 2,
MR KALPESH N SHASTRI for Respondent(s) : 3,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 04/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE MD SHAH)

1. The petitioner has prayed in this petition to quash and set aside the impugned order dated 1-7-2004 passed by the learned Central Administrative Tribunal ,Ahmedabad Bench,Ahmedabad (for short “the Tribunal”) in O.A. no.185/2003 whereby the learned Tribunal rejected the application of the petitioner only on the ground of limitation.

2. The petitioner was working as Sorting Assistant at SRO, Senior Division, Surat. He was served with a chargesheet dated 1-6-1989 for a serious charge of misappropriation of amounts. Regular Departmental Inquiry was held and the Inquiry Officer in his report dated 29-4-1991 found the petitioner guilty for the charges levelled against him. After considering the reply of the petitioner, the disciplinary authority by his order dated 20-11-1992 removed the petitioner from service, against which appeal was preferred which was also dismissed by the appellate authority, so as the revision by the revisional authority. That was done in 1994.

3. The petitioner was also criminally prosecuted. Criminal complaint was filed against him on 18-2-1987 for offence of misappropriation and the chargesheet before the criminal court was filed on 15-6-1988. However, there was undue delay on the part of the Criminal Court in deciding the case against the petitioner-accused and after a period of 14 years i.e. on 14-8-2002, he was acquitted by the Criminal Court as the witnesses turned hostile. On being acquitted, he made representation to the respondent-authority on 10-12-2002 for reinstating him in service, but his representation was rejected. Therefore, he approached the learned Tribunal by way of original application in 2003 and challenged the impugned order of dismissal passed in 1992 which was dismissed by the appellate authority and the revisional authority in 1994. On behalf of the respondent-authorities preliminary objection was raised regarding maintainability of the application on the ground of limitation. Relying on the Honourable Supreme Court judgment in the case of **Ramesh Chandra Sharma v. Udam SinghKamal & Ors.**

2000(2) SLJ 90, it was submitted that the Tribunal cannot decide the matter on merits. The learned Tribunal accepted the contention and rejected the application on the ground of gross delay and laches as it was of the opinion that the order of acquittal passed after a long time will not confer any right to the applicant to challenge the departmental proceedings and the orders passed in it. This order is challenged in this petition by the petitioner.

4. Though this petition is labelled as a petition under Article 226 and 227 of the Constitution, strictly speaking, it is a petition under Article 227 , the scope of which is very narrow and limited. Admittedly, in the instant case, there is a gross delay of about 9 years in approaching the Tribunal against the order of removal which was confirmed by the appellate as well as the revisional Court. Merely because the petitioner was acquitted in 2002 will not give any right to him to approach the Tribunal after such a long time. The submission made by Mr. Mayank Desai for the petitioner that the petitioner was under the bona fide impression that he can approach

the Tribunal after the order of acquittal passed by the competent Crimial Court has no substance because the impugned orders were passed by the disciplinary authority in a regular inquiry. It is a different matter that on the witnesses turning hostile, the petitioner-accused was acquitted for a serious offence of mispropriation by the Criminal Court in 2002 after a period of 14 years of the commission of the offence, but that will never give any right to the petitioner to approach the Tribunal so late. In any case, when the Tribunal did not think it fit to exercise its jurisdiction in favour of the petitioner-applicant on the ground of gross delay and laches, then this Court in its limited jurisdiction under Article 227 cannot interfere with such order as we do not find any error, much less, any jurisdictional error committed by the Tribunal in passing the impugned order.

5. Before parting with we may state that an attempt was made by the learned Counsel for the petitioner to challenge the impugned order of removal which was confirmed by the appellate authority as well as

revisional authority respectively without challenging the same in this petition. As stated earlier, when the Tribunal had rejected the application on the ground of delay and laches and we agree with the finding recorded by the Tribunal, then there is no question of going into the merits of the case and consider the challenge to the order of removal passed by the authorities below.

6. In view of the above discussion, this petition fails, and is hereby dismissed. Rule discharged.

(B.J.Shethna,J.)

(M.D.Shah,J.)

bjs-lee.